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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/12/2005

Shawn Fowler

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26389

7590

05/07/2010

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SEATTLE, WA 98101-2347

EXAMINER

O'HERN, BRENT T

ART UNIT

PAPER NUMBER

1783

NOTIFICATION DATE

DELIVERY MODE

05/07/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

efiling@cojk.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,556	<b>Applicant(s)</b> FOWLER ET AL.	
	<b>Examiner</b> Brent T. O'Hern	<b>Art Unit</b> 1783	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

#### ***Claims***

1. Claims 1 and 4-10 are pending.

### **WITHDRAWN REJECTIONS**

2. All rejections of record in the Office action mailed 9/4/2009 have been withdrawn due to Applicant's amendments in the Paper filed 2/4/2010.

### **NEW OBJECTIONS**

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Specification***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the phrases "the slab having a top face and a bottom face defining a thickness of 3 or 4 inches" in claim 1, lines 2-3, "extending continuously" in claim 1, lines 7, 9, 13 and 15 are not supported by the text of the Specification. If Applicant believes support is present in the Figures then Applicant is advised to consider amending the text of the Specification while being careful not to add new matter.

### **NEW REJECTIONS**

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

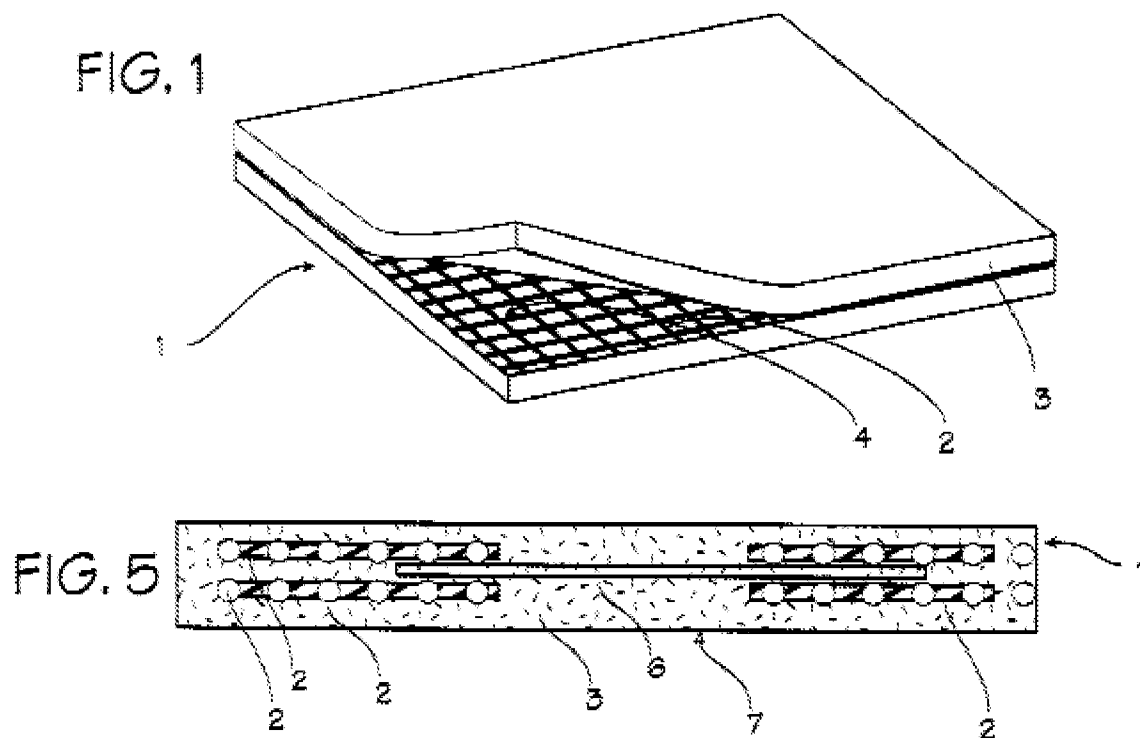
6. Claims 1 and 4-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. The phrase “the slab having a top face and a bottom face defining a thickness of 3 or 4 inches” in claim 1, lines 2-3 is new matter. In Applicant’s Paper filed 2/4/2010 Applicant asserts that support is present in the Examples. The examples have support for a “spacing” of 3 or 4 inches and not a slab having a thickness of 3 or 4 inches. Page 5 of the Specification does state the “mat” can be 3 inches thick.

***Claim Rejections - 35 USC § 103***

8. Claims 1 and 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kent (US 5,924,694) in view of Crook (US 5,482,754).

Kent ('694) teaches a rubber mat (*See FIGs 1, 5 and col. 3, l. 1 to col. 4, l. 4, col. 4, ll. 23-34, mat #1.*),



comprising a flexible rubber slab having a top face, a bottom face, opposed side edges defining a width and opposed end edges defining a length (See FIGs 1 and 5.); and a first and second rigidifying grid of reinforcing wire spaced between the top and bottom faces made of steel having the same gauge embedded within the rubber slab and consisting of a plurality of parallel spaced wires embedded within the rubber slab and extending continuously between the opposed side edges for most of the width of the rubber slab and a plurality of evenly parallel spaced wires embedded within the rubber slab and extending continuously between the opposed end edges for most of the length of the rubber slab with the reinforcing wire providing sufficient rigidity while retaining sufficient flexibility to conform to the surface applied thereto (See FIGs 1, 5 and col. 3, l. 1 to col. 4, l. 4, col. 4, ll. 23-34, mat #1 with two steel wire/screen grids of wire embedded within rubber #3.), however, fails to expressly disclose the slab being 3 or 4

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inches thick, the diameter of the reinforcing wire of the first and second rigidifying grids not being smaller than the diameter of number ten gauge wire, being six and three gauges in the different directions, the wire being of different gauges in different directions, the spacing being two or three inches in one direction and different in the different directions and the rubber being made from recycled vehicular tires.

However, Kent ('694) teaches the screens need to be strong enough to give structural support and flexible enough so as to conform to the surface to be covered and the size of the wire and spacing being larger or smaller depending on how the mat is used (*See col. 3, l. 1 to col. 4, l. 4, col. 4, ll. 23-34.*). Furthermore, Applicant acknowledges on p. 4, ll. 26-28 of Applicant's Specification that the gauge and spacing of the wire can be altered to satisfy the intended use.

Crook ('754) teaches a wire reinforced rubber mat made from recycled vehicle tires that are capable of supporting heavy vehicles and protecting against flying debris (*See col. 2, ll. 4-21 and 35-40.*) for the purpose of supporting ground vehicles or protecting against flying debris as a result of blasting (*See col. 2, ll. 35-40.*).

Regarding the dimensions and orientations of the reinforcement and slab, it would have been obvious to one having ordinary skill in the art to adjust the dimensions and orientations to the above values and orientations for the intended application since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, a person having ordinary skill in the art would know how through routine experimentation and optimization to increase or decrease the dimensions and

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orientations of the reinforcement and slab based on the load and flexibility requirements for the particular application.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to use recycled rubber tires as taught by Crook ('754) in Kent ('694) and vary the gauge number and spacing of the wire in order to provide a strong, flexible mat that is economical, environmentally friendly and satisfies the intended use requirements.

#### **ANSWERS TO APPLICANT'S ARGUMENTS**

**9.** In response to Applicant's arguments (*See p. 5, paras. 2 and 4 of Applicant's Paper filed 2/4/2010.*) regarding the amended claims with new limitations, it is noted that said amendments are acknowledged and the new issues regarding these amendments are discussed above.

**10.** In response to Applicant's arguments (*See p. 5, para. 5 of Applicant's Paper filed 2/4/2010.*) that Kent ('694) and Crook ('754) do not react to forces in the same manner as claimed and optimization is insufficient, it is noted that Applicant's claims are directed towards a product and not to a method of using. Kent's ('694) structure modified by the teachings of Crook ('754) with knowledge as known by a person having ordinary skill in the art would obviously provide the claimed product as the structures are the same.

**11.** In response to Applicant's arguments (*See p. 5, para. 6 to p. 6, para. 2 of Applicant's Paper filed 2/4/2010.*) that Kent ('694) does not describe two layers but rather a wire frame and changing its' deformability would decrease its' usefulness, it is noted that Kent ('694) teaches embodiments for two grids as well as for one grid with

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the two grid embodiments being the same as claimed by Applicant, thus, having the same properties. Kent's ('694) material is flexible, thus, is capable of conforming to the surface of the substrate below the mat.

**12.** In response to Applicant's arguments (*See p. 6, para. 3 of Applicant's Paper filed 2/4/2010.*) regarding amended claim 1 and the new limitations, it is noted that said amendments are acknowledged and the new limitations are discussed above.

**13.** In response to Applicant's arguments (*See p. 7, paras. 2-4 of Applicant's Paper filed 2/4/2010.*) that neither Kent ('694) and Crook ('754) are able to conform to a ground surface as the material in Crook ('754) is flexible in all planes and the neoprene in Kent ('694) is insufficiently strong to provide resistance to bending, it is noted that said arguments are not persuasive. Applicant's acknowledgment of the prior arts' flexibility supports the position that the structures have the ability to conform. Since Applicant's mat is able to conform to an uneven ground its' mat is also flexible in all planes. Thus, this argument is not sufficient in distinguishing Crook ('754) as Applicant's mat has the same properties. Applicant's mat is clearly stronger as a result of the reinforcing wires/mesh. Thus, Kent's ('694) use of wires/mesh to make its' mat stronger does not teach away from using mesh as both Kent ('694) and Applicant use mesh for the same purposes.

**14.** In response to Applicant's arguments (*See p. 7, para. 5 of Applicant's Paper filed 2/4/2010.*) that since Kent's ('694) mat needs to be bendable one would not use screens to make it stronger, it is noted that said arguments are not persuasive as Applicant's



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mat needs to be strong and bendable and the use of the screen in Kent ('694) does not make the mat non bendable.

**15.** In response to Applicant's arguments (*See p. 8, paras. 1-2 of Applicant's Paper filed 2/4/2010.*) that discovering an optimum value of a result effective variable is not applicable in this case because Kent ('694) and Crook ('754) react differently to applied forces than what is claimed in claim 1, it is noted that providing larger or smaller wires and thicker and thinner slabs can provide stronger or weaker structures that are either more or less flexible and a person having ordinary skill in the art would know how to adjust these parameters.

**16.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-6385. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/  
Examiner, Art Unit 1783  
April 18, 2010

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1782